

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATURAL RESOURCES DEFENSE COUNCIL,)	
1200 New York Ave., N.W., Suite 400)	
Washington, DC 20005,)	
)	
Plaintiff,)	
)	Civil Action No. _____
v.)	
)	
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Ariel Rios Building)	
1200 Pennsylvania Ave, NW)	
Washington, DC 20460)	
)	
Defendant.)	
)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Plaintiff Natural Resources Defense Council, Inc. (NRDC) asserts violations of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, by defendant United States Environmental Protection Agency (EPA), for refusing to disclose responsive records concerning toxicity of pesticides to bees.

2. The sudden and dramatic loss of millions of honey bee colonies, referred to as colony collapse disorder, was first documented in the United States in the fall of 2006. In the past two years, beekeepers have reported unexplained losses of thirty to ninety percent of their hives. According to the USDA, \$15 billion worth of crops grown in the U.S. are dependent on bees for pollination. There is no confirmed cause of colony collapse, but a new class of insecticides, first approved for use in the past decade, is suspected to play a role.

3. In 2003, EPA granted a “conditional” registration to one of these new pesticides, manufactured by Bayer and known to be harmful to bees. This pesticide was recently banned in Germany because of its contribution to a massive bee die-off. EPA conditioned its approval of this pesticide in part on Bayer’s submission of additional studies about impacts on bees. NRDC seeks records through FOIA regarding EPA’s evaluation of the safety of this pesticide to bees.

4. This court has jurisdiction over this action, and venue is proper in this district, pursuant to 5 U.S.C. § 552(a)(4)(B).

5. Plaintiff NRDC is a national, not-for-profit environmental and public health membership organization with more than 420,000 members nationwide.

6. Defendant EPA is a federal agency within the meaning of FOIA and has possession or control of the records that NRDC seeks in this action.

7. NRDC submitted a FOIA request to EPA on July 17, 2008. Generally, NRDC’s request seeks records regarding use of the pesticide clothianidin on crops in the United States, EPA’s evaluation of the safety of this pesticide for bees, studies submitted by chemical manufacturers regarding the toxicity of this pesticide to bees, and communications with other federal or foreign agencies about the environmental risks posed by this pesticide.

8. By letter dated July 22, 2008, EPA acknowledged receipt of NRDC’s FOIA request on July 18, 2008.

9. EPA’s response to NRDC’s FOIA request was due August 15, 2008. EPA failed to produce any documents or otherwise respond to NRDC’s request.

10. NRDC also sought a fee waiver from EPA in connection with its July 17, 2008 FOIA request. EPA failed to respond to or make any determination on the fee waiver request.

11. NRDC is entitled under FOIA to a waiver of EPA's search and production fees with respect to this request. NRDC has a demonstrated ability and intent to analyze and convey the information in the requested records to a broad public audience. Disclosure of the requested records will contribute significantly to public understanding of government activities and operations. NRDC is a non-profit organization with no commercial interest in the requested records.

12. NRDC seeks a declaration that EPA has violated FOIA by refusing to disclose responsive records and an injunction ordering EPA to provide those records. NRDC also seeks a declaration that, pursuant to FOIA, NRDC is entitled to a fee waiver from EPA in connection with its FOIA request.

13. NRDC brings this action on its own behalf and on behalf of its members. NRDC and its members have been and continue to be injured by EPA's failure to provide responsive records and failure to grant a fee waiver for this FOIA request. The requested relief will redress these injuries.

CLAIM FOR RELIEF

14. NRDC has a statutory right under the Freedom of Information Act for the records that it seeks, at no cost, and there is no legal basis for EPA's refusal to disclose them.

REQUEST FOR RELIEF

WHEREFORE, the plaintiff respectfully requests an Order:

- (1) Declaring that the defendant's failure to disclose the records requested by the plaintiff in a timely fashion is unlawful;
- (2) Declaring that plaintiff is entitled to a waiver of search and production fees with respect to its request;

- (3) Directing the defendant to disclose the requested records to the plaintiff at no cost within 20 days;
- (4) Awarding plaintiff its costs and attorneys' fees; and
- (5) Granting such other and further relief as the Court deems just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Aaron Colangelo', written over a horizontal line.

Aaron Colangelo (D.C. Bar No. 468448)
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Counsel for Plaintiff

Dated: August 18, 2008